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THIRD COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE TWENTY-FOURTH MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 7 May 1975, at 3.40 p.m.

Chairman: Mr. YANKOV

Bulgaria

Rapporteur: Mr. MANYANG

Sudan

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N.B. Participants wishing to have corrections to this provisional summary record incorporated in the final summary record of the meeting are requested to submit them in writing in quadruplicate, preferably on a copy of the record itself, to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva, within five working days of receiving the provisional record in their working language.

State Dept. review completed

ORGANIZATION OF WORK

The CHAIRMAN suggested that, in view of the limited time available for discussion and in accordance with Rule 26 of the Rules of Procedure, delegations should limit their statements to five minutes.

It was so decided.

DEVELOPMENT AND TRANSFER OF TECHNOLOGY (continued) and
SCIENTIFIC RESEARCH (continued)

Draft amendments to the draft articles on marine scientific research contained in document A/CONF.62/C.3/L.19 (A/CONF.62/C.3/L.28)

Mr. WALKATE (Netherlands), continuing his statement begun at the previous meeting concerning the comments made on his delegation's proposals (A/CONF.62/C.3/L.28), said that the document proposed a two-phase settlement of disputes procedure. During the first phase, discussions would take place between the research and the coastal State with a view to solving any difficulties that might have arisen. If they did not yield results, impartial experts would be called in, and if neither of the parties was convinced by the experts' advice the general procedures for the settlement of disputes would be followed: that would constitute the second phase. The concision of the draft articles might have made the procedure appear more complicated than it really was.

The second and final phase had to be a settlement by a third party, but as third-party settlements at the State level were usually very protracted and costly, his delegation favoured a procedure in which experts might be called in as that would be expeditious and therefore in the interests of all the parties concerned.

A convention without a satisfactory third-party settlement procedure would be unacceptable.

Draft articles on marine scientific research (A/CONF.62/C.3/L.29)

Mr. VARGAS (Mexico), introducing draft articles on marine scientific research (A/CONF.62/C.3/L.29), said that they were the culmination of a process which had begun after the second session. They incorporated ideas advanced by a great many delegations and had been prepared in consultation with them. The proposals were inspired by the conviction that in future marine scientific research would be extremely important for the developing countries.

One of the best ways of promoting scientific progress was the free flow of ideas, and that was the reason for the provisions in draft article VII concerning bilateral, regional and multilateral agreements. Most participants in the Conference, including his own delegation, favoured a legal regime requiring the coastal State's consent to research. Others preferred a system requiring notification to the coastal State and participation by it. The new draft articles sought to reconcile the two schools of thought and to protect the interests of both coastal and research States.

The sponsors were aware of the great difficulty of distinguishing between fundamental and applied research, but experience showed that scientists acting in good faith could differentiate between activities which were traditionally described as fundamental research and research directed to the discovery and utilization of marine resources, both renewable and non-renewable. Such distinctions might be artificial, but with the development of science and technology all countries would wish to intensify the latter type of research so as to strengthen their economies, while at the same time preserving the marine environment for the benefit of future generations.

Miss AGUTA (Nigeria) said that her delegation had joined in sponsoring the proposal in order to facilitate further negotiations: it did not represent her delegation's final position. The sponsors, in trying to achieve a compromise, had borrowed ideas from documents A/CONF.62/C.3/L.13/Rev.2, A/CONF.62/C.3/L.17, A/CONF.62/C.3/L.26 and A/CONF.62/C.3/L.28.

Mr. OSPINA (Colombia) said that his delegation had sponsored the new draft articles in the belief that scientific research was essential and that such a proposal would advance the negotiations. There were two schools of thought about research, that of some developed countries and that of the developing countries. The latter were trying to expand their scientific capability and technology so as to narrow the gap between themselves and the developed countries, whereas developed countries feared that the measures advocated by the developing countries would hamper or discourage research. The problem lay in the lack of trust between the two groups, and it was his hope that the proposal would help to overcome that.

The sponsors were proposing that the research State should decide whether a given project was pure or applied marine research. If its decision was accepted by the coastal State, implementation of the project could go ahead. If the coastal State objected, and the issue could not be settled by direct talks, the parties could have recourse to independent experts. Such arrangements would obviate arbitrary action by either State.

Mr. TREVES (Italy) said that no substantial measure of agreement on marine scientific research had been achieved at the current session. However, the four-power draft articles (A/CONF.62/C.3/L.29), together with the proposals in documents A/CONF.62/C.3/L.19 and A/CONF.62/C.3/L.28, provided a range of compromises for the Committee to work on. In addition, the socialist countries in their draft articles (A/CONF.62/C.3/L.26) had sought to find a balance between the interests of coastal and research States.

He welcomed the fact that article VII, paragraph 5, of the four-power draft articles incorporated the essence of an idea put forward by his delegation in the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor, to wit, that the research State could proceed with a fundamental research project if within 120 days it received no acknowledgment of receipt of its communication to the coastal State. He also welcomed the inclusion of provisions, however inadequate, on the settlement of disputes.

However, the four-power proposal as a whole was not acceptable. It failed to mention research in the territorial sea. Moreover, it conferred upon the coastal State, as did the socialist countries' proposal, the residual power to decide whether research in the economic zone was or was not related to resources; that provision was unacceptable to his delegation. Some of the provisions of draft article VIII were not entirely satisfactory because they might extend the competence of the coastal State beyond the economic zone.

Mr. HERNANDEZ (Cuba) said that Cuba, a geographically-disadvantaged country, had made large investments in its fishing and merchant fleets and in hydrographic research as part of its efforts to satisfy the growing needs of its people - needs which could not be confined within a line drawn 40 or 50 miles from its coasts. It had made appreciable progress in developing its research capability and in training of technical staff, aided by international co-operation - largely with FAO - and assistance under bilateral agreements with the Soviet Union and other socialist countries.

He welcomed the four-power proposal, which should assist the Committee to produce a single text on the subject. It rightly included a provision requiring the coastal State's consent to and its participation in research in the economic zone, and on the continental shelf, thus safeguarding that State's sovereignty over living and non-living resources: such a requirement was indispensable for developing countries. In his delegation's view, however, the proposal erred in giving the coastal State the right to veto research projects not related to the resources of the economic zone. The interests of the coastal State would surely be adequately safeguarded by a requirement to notify the purposes of the project and by its right to participate in the research. Moreover, the uncertainty so created would discourage research and harm the interests of the developing coastal States concerned.

Mr. TAYLOR (United Kingdom) commended the positive movement reflected in the four-power draft articles (A/CONF.62/C.3/L.29). Some of the sponsoring delegations had stated at Caracas that it was artificial to differentiate between fundamental and applied research because both were stages of the same process, but they had come to recognize that the distinction could be made and were prepared to apply a more liberal régime to fundamental research - a change of attitude that would be welcomed by scientists. The difficulties of differentiating between the two were not confined to marine scientific research: indeed, any attempt to divide a body of knowledge into separate compartments could not escape imprecision and overlapping, and that was why a single régime had been suggested for marine scientific research. At the same time, that approach had serious drawbacks. It assumed a degree of homogeneity which existed only at the university level and would mean one régime for two dissimilar types of activity - pure and applied research.

He was pleased to note that in contrast to the proposal in document A/CONF.62/C.3/L.13/Rev.2, according to which marine scientific research in the international sea-bed area would be conducted through the international authority itself, thus giving the Authority direct and effective control at all times over the research, a more liberal attitude was advocated in the four-power draft articles.

Even though the document showed a pronounced bias in favour of the coastal State, some change of attitude in that regard had taken place, though not enough. The period of 120 days for the reply by the coastal State was far too long and should be substantially reduced perhaps by half. He assumed that the third party referred to in article VII, paragraph 9, was the arbiter.

He was concerned about the implications of the requirement for the coastal State's consent to resource research programmes to be co-ordinated, and occasionally carried out, by recognized international organizations such as the International Council for the Exploration of the Sea (ICES). An ICES programme concerning fish stock breeding might involve the economic zone of several States which might not necessarily all be members of the organization, and the programme could consequently be blocked. His delegation also deplored the proposed constraints on publication and the undertaking to supply raw data, both of which would be anathema to scientists.

Mr. MBOHE (Kenya) welcomed document A/CONF.62/C.3/L.29. He considered, however, that the draft articles were based on two false assumptions. First, the document implied that only States and international organizations conducted marine research, whereas, in the experience of his country, individuals also engaged in such activities. Secondly, it was surprising that the sponsors included delegations which had been associated with the preparation of document A/CONF.62/C.3/L.13/Rev.2, which did not distinguish between fundamental and resource-oriented and research, unlike the new document. Despite statements to the contrary in the Committee, scientists acknowledged that it was impossible to distinguish between pure and applied research until the results were evaluated.

His delegation rejected the provisions of article VII, paragraph 5(b). States should not be subjected to such requirements, and the failure of a coastal State to reply to a request to conduct scientific research in its economic zone should be regarded as a refusal to permit the activities.

His delegation considered that article VII, paragraph 9, was out of place since no "appropriate United Nations body" existed. Paragraph 10 of that article was also unacceptable since it prevented the coastal State from taking immediate action in the event of non-compliance with the conditions governing the conduct of a research project; the proposed arrangements were, in any event, unworkable. Article IX was superfluous, since there was no reason to differentiate between marine research vessels and other vessels.

He welcomed the fact that the sponsors had remained faithful to the concept of residual rights for coastal States. In that connexion, his delegation regarded the provisions of the third paragraph of article VII (9) as equivalent to the concept of coastal State consent and held that the coastal State might make use of these provisions to block scientific research projects.

Miss MARIANI (France) commended the sponsors of document A/CONF.62/C.3/L.29 on their effort to achieve a compromise. She welcomed the reference to the "rights of neighbouring developing land-locked States and other geographically disadvantaged States" in article IV. Other valuable features were the distinction drawn between fundamental and resource-oriented research, and the provision for recourse to experts in the settlement of disputes.

With regard to the provisions of article VII, paragraph 5 (b), her delegation preferred the more positive approach used in document A/CONF.62/C.3/L.26. Moreover, it contended that the procedure for the settlement of disputes should not leave the

final decision to the coastal State alone, as contemplated in article VII (9). Similarly, research projects should be suspended or terminated only in exceptional circumstances; the absence of safeguards in that respect would hinder scientific progress.

It was to be hoped that the sponsors would find it possible to clarify the distinction between fundamental and resource-oriented research. Her delegation would also welcome the inclusion of provisions to ensure that the coastal State could not prevent the conduct of a fundamental research project unless a group of experts advised against it.

It believed that scientific research in the international area should be unrestricted and should not be subject to the consent of either a coastal State or the proposed international authority.

Mr. JAIN (India) said that he regretted that the sponsors of document A/CONF.62/C.3/L.29 had not given notice of their intention to other members of the Group of 77. Though well-intentioned, their attempt to achieve a compromise was premature.

The document contained separate provisions for fundamental and resource-oriented research. Some of the sponsors, however, had earlier maintained that it was impossible to distinguish between the two forms of research.

Although it understood their purpose, his delegation could not support the provisions of draft article VII, paragraph 5 (b). Furthermore, the sponsors should have included specific objective criteria among the provisions on the settlement of disputes.

Mr. TIKHONOV (Union of Soviet Socialist Republics) said that the attempt by the sponsors of document A/CONF.62/C.3/L.29 to differentiate between fundamental and applied research and to establish separate conditions for them, was a welcome move towards compromise. Unfortunately, however, the provisions of draft article VII, paragraphs 8 and 9, showed that the sponsors had not abandoned their original position in the case of non-resource-oriented research. Their approach was not acceptable to his delegation. Furthermore, his delegation rejected the requirement that research States should comply with the provisions of those paragraphs prior to initiating a research project. The financing and organization of a research project had to be completed well in advance of implementation and could not go ahead if there was a risk of permission being refused or of having scientists and expensive equipment kept idle pending a decision by the coastal State.

He failed to see how conciliation machinery could be used until a research project was under way. When it was in progress, however, the coastal State's scientists on board the research vessels could establish whether the research was fundamental or resource-oriented. Moreover, he considered that the complicated procedure envisaged in the case of research in the international sea-bed area could be avoided and the problem resolved by the publication of the appropriate scientific data in the scientific bulletins of such organizations as the Intergovernmental Oceanographic Commission.

Mr. YUSUF (Somalia) said that his delegation could not support document A/CONF.62/C.3/L.29, which contained the same untenable artificial distinction between pure and applied scientific research as document A/CONF.62/C.3/L.26. It rejected the arbitration procedure outlined in the new draft articles, since it was based on the assumption that such a distinction was possible.

With regard to draft article VII, paragraph 5(b), his delegation, unlike the sponsors, considered that the lack of a reply from a coastal State should be regarded as rejection of an application to conduct scientific research. Many developing countries might not be in a position to assess within the short period proposed the information submitted to them. His delegation strongly objected to the provisions of paragraph 10 of draft article VII and had serious reservations concerning draft article VIII.

Mr. FINUCANE (Ireland) commended the sponsors of document A/CONF.62/C.3/L.29 on their comprehensive and flexible approach. They had managed to incorporate in their proposal a large number of the elements of documents A/CONF.62/C.3/L.13, L.19, L.26 and L.28.

One of the main problems arising in connexion with marine scientific research was the lack of dialogue between researching and coastal States, which could lead to mutual suspicion and to arbitrary refusals and delays in the granting of consent to the conduct of such activities. The sponsors had attempted to establish international guidelines which would be entrenched in a convention and which would make arbitrary refusal more difficult. At the same time, the rights of the coastal State would be protected, since it would participate in the process from the beginning.

His delegation attached the utmost importance to the provisions outlining a ladder approach to arbitration. With regard to the remark by the representative of Kenya concerning the third paragraph of article VII(9), it was the understanding of his delegation that the sponsors intended that paragraph to be considered in the context of the draft article as a whole and not in isolation, as that representative of Kenya had seemed to imply.

Mr. BUSTANI (Brazil) said that he found it surprising that the developing countries which were sponsors of document A/CONF.62/C.3/L.29 should have introduced in article VII provisions which were, in practice, equivalent to a notification régime.

His delegation maintained that it was not possible to distinguish between pure and applied research. Consequently, it was not convinced that draft article VII, paragraph 3, was sufficient to ensure that the researching State would inform the coastal State of the exact nature of each research project. Similarly, if a consent régime was effective, the proposed procedure for the settlement of disputes would be superfluous. Furthermore, the six-month time-limit envisaged in article VII, paragraph 10, was unacceptable to his delegation.

The provisions relating to the conduct of scientific research in the international area were tantamount to absolute freedom of research, a concept which his delegation had consistently rejected.

It was regrettable that every attempt to achieve compromise on the problems relating to scientific research should result in diminishing the rights of the coastal State and no concessions by researching States.

Mr. HUSSAIN (Pakistan) said that he regarded the decision to submit the four-Power draft articles as untimely, since they differed substantially from the proposal submitted on behalf of the Group of 77 (A/CONF.62/L.13/Rev.2).

His delegation was one of those which considered that it was not possible to distinguish between fundamental and resource-oriented scientific research, and it was opposed to the provisions of articles II and VII, which implied that researching States had the right to engage in fundamental scientific research in the economic zones of other States. Those provisions were contrary to the concept of coastal States' residual powers in their economic zones.

It was the view of his delegation that the coastal State should have the exclusive right to regulate all research activities in its economic zone. Consequently, it could not accept the provisions of articles V and VII. Furthermore, it considered that disputes between the coastal State and the researching State should be settled by bilateral negotiations without the intervention of any third party.

With regard to article VIII, his delegation considered that the international authority should have over-all control of research activities in the international area, including the water column.

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Mr. PONS (El Salvador) said that the sponsors of document A/CONF.62/C.3/L.29 had endeavoured to offer a constructive solution to the problems which had arisen with regard to marine scientific research by including in their draft articles any points on which consensus had been reached at either the second or the current session and reconciling interests on which there had been semi-consensus, bearing in mind the need to encourage marine scientific research in the interests of the survival of humanity. They hoped that the document could serve as a basis for future discussions and appealed to all delegations to study it carefully with that end in view.

It was because no law could be valid without a competent institution to administer it that reference had been made in article VII to an "appropriate United Nations body".

Mr. RAMADAN (Egypt) said that the document under discussion (A/CONF.62/C.3/L.29) differed from other documents on the subject in that it differentiated between pure and resource-oriented scientific research. It was difficult to decide what pure research actually covered. The document was not clear with regard to the participation of coastal States in research carried out in the waters within their jurisdiction, and the actual role of the scientist of the coastal State within the team of experts working on the research vessel was not specified. Moreover, some provisions in the document could be said to depend on distinguishing between raw results of research and processed data.

The document was, however, a step towards compromise and should be studied with an open mind, since everything could be perfected through discussion. He would state his final position on the subject at the following session.

Mr. JARAMILLO (Ecuador) said that it was regrettable that the views expressed in document A/CONF.62/C.3/L.29 had not been brought to the notice of the Group of 77 when it was studying the proposals for draft articles which had subsequently been issued as document A/CONF.62/C.3/L.13/Rev.2. The proposals in the document under discussion (A/CONF.62/C.3/L.29) required careful study, and he would comment on only two points. The first was that, whereas the proposals required the distinction between pure and resource-oriented research to be made only at the time when the research State was submitting its proposals, the nature of the research could really be known only after it had been carried out and the results analysed. The second was the proposal in article VII, paragraph 10, that the coastal State should passively contemplate the harm that research was doing to its marine environment for six months before requesting an opinion from the

appropriate United Nations body. In his delegation's view, scientific research in the zone under the jurisdiction of the coastal State should be carried out only with that State's consent, and no arbitration was acceptable from any other party.

Mr. KOLCHAKOV (Bulgaria) said that his delegation had had little time to study document A/CONF.62/C.3/L.29. Nevertheless, the new draft articles were clearly an improvement on document A/CONF.62/C.3/L.13/Rev.2, and he hoped that they might enable a compromise to be reached at the following session. He had many reservations about the document, but he realized that it was only through compromise that a convention would be produced. The drafting of final articles on the subject of marine scientific research would call for a thorough study of documents A/CONF.62/C.3/L.26, L.28 and L.29, and of all other documents quoted in them. Document A/CONF.62/C.3/L.29 represented a sincere effort at compromise and, with goodwill on the part of all participants, might soon result in the drafting of a consolidated text.

Mr. CACERES (Peru) said that the participants' awareness of the need to produce generally acceptable texts had been apparent at all the meetings of informal groups at the current session. Although the sponsors of document A/CONF.62/C.3/L.29 had been active in the discussions which had culminated in the consensus of the Group of 77 on document A/CONF.62/C.3/L.13/Rev.2, the document they had just submitted showed a completely different approach to the problems. It was a combination of two concepts, the consent régime and the notification régime. Many speakers had referred to the constructive contribution made by the sponsors of document A/CONF.62/C.3/L.29, but their membership of the Group of 77 was another factor to be borne in mind. He hoped that in the preparation of the consolidated text it would be remembered that the majority opinion of the Group of 77 was expressed in document A/CONF.62/C.3/L.13/Rev.2.

Mr. BRANKOVIC (Yugoslavia) said that his delegation had had little time to study document A/CONF.62/C.3/L.29 in detail but had difficulty in accepting its general philosophy, since it was contrary to that of document A/CONF.62/C.3/L.13/Rev.2, which was supported by his delegation as a member of the Group of 77.

Texts on item 13 (Scientific research) and item 14 (Development and transfer of technology) (A/CONF.62/C.3/L.31)

The CHAIRMAN introduced document A/CONF.62/C.3/L.31 on behalf of the chairman of the informal meetings on items 13 and 14, who was unfortunately unable to be present. The document consisted of two parts, part I, containing proposals received by the Chair as possible consolidated texts, and part II, containing texts submitted as conference room papers for the informal meetings which had not been considered at those meetings owing to lack of time.

Mr. BRANKOVIC (Yugoslavia) suggested that, in order to avoid confusion between texts having different status, part II should be deleted and issued either as a conference room paper or as an annex to document A/CONF.62/C.3/L.31.

Mr. WALKATE (Netherlands) opposed that proposal because it would deviate from the practice established by the Committee at the second session.

After a brief discussion in which Mr. VITIKHONOV (Union of Soviet Socialist Republics), Mr. BRANKOVIC (Yugoslavia), Miss MARIANI (France) and Mr. WALKATE (Netherlands) took part, Mr. TRESSSELT (Norway), supported by Mr. DAHIOUCHE (Algeria), proposed that the decision should be left to the Chairman.

The CHAIRMAN proposed that part II should be issued as an annex to document A/CONF.62/C.3/L.31.

It was so decided.

Mr. BUSTANI (Brazil) expressed surprise at seeing reproduced within the "possible consolidated texts" some paragraphs which had not been adopted by the relevant small working group. His delegation had suggested alternative texts, which it would submit to the secretariat with a view to their inclusion in the annex as a conference room paper.

Mr. JAIN (India) said that, as paragraph 5 of section B of part I of the document had been inserted at the request of his delegation, it might be preferable to replace that paragraph by the Indian proposal in part II, section C, which could then be deleted.

The CHAIRMAN appealed to the Indian representative not to reopen the discussion at so late a stage, and to agree to leave the wording of the document stand.

Mr. JARAMILLO (Ecuador) reminded the Committee that the chairman of the informal meetings had suggested that section I.B of the document should be left pending, and had pointed out that, in the absence of consensus on the subject, that section could not be considered as a possible consolidated text. It was still under discussion and would continue to be discussed at the following session.

The CHAIRMAN drew attention to the existence of an alternative to section B, namely, to delete the paragraph. The texts would be subject to further negotiations and should therefore be maintained on that understanding.

PRESERVATION OF THE MARINE ENVIRONMENT (continued)

Results of consideration of proposals and amendments relating to the preservation of the marine environment (A/CONF.62/C.3/L.15/Add. 1)

Proposals or amendments informally introduced as conference room papers, but not agreed upon by the informal sessions on item 12 (Preservation of the marine environment) during the third session of the Conference (A/CONF.62/C.3/L.30)

Mr. VALLARTA (Mexico), Chairman of the informal meetings on item 12, introduced documents A/CONF.62/C.3/L.15/Add. 1 and A/CONF.62/C.3/L.30.

Mr. BUSTANI (Brazil) said that the alternative submitted by his delegation to one of the paragraphs had not been included in document A/CONF.62/C.3/L.30. He assumed that the reason for the omission was that the alternative had not been introduced as a conference room paper. However, his delegation would like it to be included in the document.

The CHAIRMAN undertook to see that the alternative was included.

Mr. STILES (United Kingdom) said that at an earlier meeting the Committee had invited the United Kingdom, as depositary of the 1972 London Convention on Dumping, to give an up-to-date report on the status of the Convention. He could inform the Committee that 13 States had ratified or acceded to the Convention. Since 15 ratifications or accessions were required before the Convention could be brought into force, he urged delegations whose Governments were or would shortly be in a position to ratify it to inform his delegation as soon as possible, so that his government might make arrangements for the meeting of the Contracting Parties which had to be held within three months of the Convention's entry into force.

The meeting rose at 6.20 p.m.